

1934 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1934)
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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who are too blind or defective of sight to be materially benefited by the methods of instructions in vogue in the public schools, for the purpose of securing their attendance at the state school for the blind. (R. L. '05, §1937A; '07, c. 407, §1; '09, c. 396, §1; G. S. '13, §4150; '17, c. 346, §2; Mar. 27, 1931, c. 92.)

4617. Payments by State Board of Control.—The State Board of Control is hereby authorized to defray the necessary expenses of the aforesaid work from the appropriation for the current expenses of said board, provided, that in any county of this state now or hereafter having a population of over one hundred fifty thousand (150,000) inhabitants and an assessed valuation of over Two hundred million (\$200,000,000) Dollars, exclusive of money and credits, the county board of said county is hereby authorized to defray part or all of the necessary expenses of maintaining said work within said county from the general revenue fund of said county, not exceeding the total sum of Three thousand six hundred (\$3,600) dollars, in any one calendar year, and in carrying on said work may appoint and employ an assistant to the

regular field agent for the blind in said county, who shall work under the direction of said agent in said county. The portion of the salary of said field agent and of any such assistant to be paid by said county, shall be fixed by the county board at its first meeting after the taking effect of this act and thereafter at its first meeting in January in each year, and such salary of said field agent and said assistant shall be paid in the same manner as the salary of other county officers and employees are paid. All necessary expenses of said agent and assistant in carrying on said work in said county, not paid by the State Board of Control shall be paid by said county board as other claims against said county are paid. Any sums paid out by the State Board of Control since January 1st, 1933, for carrying on said work for the blind in any such county included in the proviso herein, may be refunded to said Board of Control by said county board out of the funds available for said work during said calendar year. (G. S. '13, §4153; '13, c. 488, §3; '17, c. 185, §1; '17, c. 346, §5; '21, c. 24, §1; '23, c. 336, §2; Mar. 2, 1933, c. 45, §1.)

Sec. 2 of Act Mar. 2, 1933, provides that the act shall take effect from its passage.

CHAPTER 27

State Public School

4619. Commitments of school by juvenile courts.

Where indigent children are committed to state public school at Owatonna but are placed on waiting list, parents and, if they cannot pay, village of their legal settlement are liable for support of children. Op. Atty. Gen., June 14, 1932.

4620. State Board of Control to assume guardianship.

Commitment by one county of child having legal settlement in another county binds the committing county for the future care of such child, as an indigent person after its return by the school. Op. Atty. Gen., July 21, 1930.

CHAPTER 28

Railroads, Warehouses and Grain

RAILROAD AND WAREHOUSE COMMISSION

4634. Secretary—Employees.

Moneys credited to "grain inspection fund" are moneys belonging to state which legislature may appropriate any way it sees fit. Op. Atty. Gen., May 16, 1933.

4638. Proceedings before commission—How commenced.

21F(2d)4, notes under §4700.

The position of Superintendent of Waterworks in the city of Eveleth is within this act, such officer not being the head of a department. 179M99, 228NW447.

Commission was without jurisdiction where it acted upon an informal letter from telephone company. Dayton Rural Telephone Co. v. N., 248NW218.

4639. Notice to respondent.

21F(2d)4, notes under §4700.

4640. Answer.

21F(2d)4, notes under §4700.

4641. Hearings before railroad and warehouse commission.

21F(2d)4, notes under §4700.

4644. Complaint that rate is unreasonable—Duty of commission.

21F(2d)4, notes under §4700.

4650. Procedure for appeals to district court from orders of Railroad and Warehouse Commission.

Chi. M. St. P. & P. R. Co., (DC-Minn), 50F(2d)430; notes under §4651.

Where order of Railroad Commission did not affect bus service in Hennepin County appeal to the district court of that county was without jurisdiction. 179M90, 228NW 444.

On appeal from order granting electric railway leave to abandon line, it was error to refuse villages affected opportunity to be heard. Minneapolis & St. Paul Sub. R. Co. v. V., 186M573, 244NW61. See Dun. Dig. 8082.

4651. Proceedings on appeal—Orders not appealed from.

172M601, 215NW188.

Findings of fact of Railroad Commission are prima facie correct on appeal. 177M136, 225NW94.

An order of the railroad commission for the separation of grades at highway crossings is prima facie valid, the burden of proof being upon appellant, and the question being a judicial one for determination of whether the order is lawful and reasonable, the suit is of a civil nature and is removable to the federal court by the railroad company though such company initiated the proceedings before the commission, but the city took an appeal and thus assumed the position of a plaintiff in the controversy. Chicago, M. St. P. & P. R. Co., (DC-Minn), 50F(2d)430. See Dun. Dig. 1589, 8082, 8389.

On the trial of an appeal from an order of the railroad and warehouse commission to district court, findings of commission are prima facie evidence of facts and its order prima facie reasonable. Minneapolis & St. Paul Sub. R. Co. v. V., 186M563, 244NW57. See Dun. Dig. 8082.

Issue of confiscation as to telephone rates must be submitted to a judicial tribunal for determination upon its own independent judgment as to both law and facts. Western Buse Telephone Co. v. N., 248NW220.

4657. Costs and attorney's fees.

Attorney's fees were properly allowed. 177M136, 225 NW94.

4659. Appeals to Supreme Court.

172M601, 215NW188.

Where district court has reversed a rate-fix-order of railroad and warehouse commission, an appeal by state and applicant does not stay entry of judgment unless so directed either by this court or district court. State v. Dist. Court., 250NW7. See Dun. Dig. 8082a.

4662. Dangerous crossings.

The Railroad and Warehouse Commission may require the construction of an overhead or underground crossing and divide the cost between the railroad company and the highway department. Where a highway is carried over railroad tracks by a bridge, the railroad company may be required to construct the bridge and the approaches, but not a part of the highway outside both bridge and approaches. 176M501, 223NW915.

4663. Report and order—Flagmen, etc.

176M501, 223NW915.

Cost of changes of grade of streets and width of roadways and corresponding changes of viaducts or bridges over railroad tracks, occasioned by growth of city, may be divided between the city and the railway. 178M193, 226NW470.

City could not require railroad without compensation to open up street across its right of way. Op. Atty. Gen., Oct. 31, 1930.

Commission has authority to entertain petitions before officials in charge of proposed highway establish it. Op. Atty. Gen., Feb. 23, 1933.

4667. Charter powers not abridged.

This section is qualified and limited by Mason's Stat. 1927, §4743, subd. 12. Op. Atty. Gen., Apr. 16, 1929.

4700. Powers and duties of commission—Notice and hearing—Schedule of rates—Revising rates.

Commission has power to fix divisions of joint rates between carriers. 21F(2d)4.

Rights of minority stockholder of carrier. 21F(2d)4. Judicial division of rates must follow determination on question by commission. 21F(2d)4.

4704. Accidents and wrecks to be reported to commission.

A legislative committee is entitled to inspect reports of accidents, wrecks or casualties. Op. Atty. Gen., Feb. 16, 1933.

4709. Violations of law—Penalty.

This section does not confer power on the Railroad and Warehouse Commission to interfere with the abandonment of a railroad on the ground that it is being operated at a loss. 32F(2d)819.

4714. Penalty for non-compliance.

This section does not confer power on the Railroad and Warehouse Commission to interfere with the abandonment of a railroad on the ground that it is being operated at a loss. 32F(2d)819.

4718-1. Telephone, etc. wires crossing or parallel-railroad.

Power company, held not liable for injury to employe who climbed to the top of a roadbuilding machine and came in contact with a power wire. 178M604, 228NW332.

RAILROADS AND COMMON CARRIERS

4734. Width of crossings and grades.

Truck driver held guilty of contributory negligence in driving on crossing in front of train. 171M355, 214NW661.

It is only where peculiar and unusual conditions render a crossing extra hazardous that a railroad can be charged with negligence in failing to protect it by gates or other safeguards, unless the duty to provide such protection has been imposed by legislative authority. 174M404, 219NW554.

Car near crossing as negligent obstruction of view of main track. 174M404, 219NW554.

Evidence as to whether or not whistle was blown. 174M404, 219NW554.

Engineer has right to assume that vehicle near crossing will be out of way in time to avoid collision and is not required to slow down or stop train until it appears that collision is imminent unless he does so. 176M214, 228NW95.

Automobilist was guilty of negligence in not ascertaining approach of freight train. 178M322, 227NW45.

Whether railroad was negligent as to pedestrian struck by caboose at crossing, held for jury. Aver v. C., 187M169, 244NW681. See Dun. Dig. 8203.

It is not negligence in itself for a railroad company to allow a train of cars to stand on a highway crossing or to move thereon. Crosby v. G., 187M263, 245NW31. See Dun. Dig. 8182a.

At crossing, railroad must take such precaution as prudent management with respect to public safety requires, regardless of statutes. Crosby v. G., 187M263, 245NW31. See Dun. Dig. 8174.

Automobile driver struck by train at crossing was guilty of contributory negligence as matter of law where train must have been visible from point where traveler should have looked. Farden v. G., 248NW284. See Dun. Dig. 8193(74).

4735. Crossings—Change of grade.

It is duty of railroad company to maintain and fix up that part of town road which crosses railroad right of way. Op. Atty. Gen., May 5, 1933.

4741. Railroad crossings to be protected.

176M501, 223NW915.

4742. Hearing.

176M501, 223NW915.

4743. Inconsistent acts repealed.

176M501, 223NW915. Subdivision 12 qualifies and limits §4667, Mason's Stat. 1927. Op. Atty. Gen., Apr. 16, 1929.

4743-7. Same—Drivers of vehicles to stop, etc.

Automobilist running into train at crossing was guilty of contributory negligence. Cosculski v. M., 182M461, 234NW693. See Dun. Dig. 8187.

4743-9. Same—Watchmen—Railroads to provide.

174M404, 219NW554; note under §4734.

4743-11. Same—Crossing gates.

174M404, 219NW554; note under §4734.

4743-12. Uniformity of devices for protection at grade crossings.

This section does not take away powers of city by charter to require warning signs at crossings. Op. Atty. Gen., Apr. 16, 1929.

4743-13. Same—Hearings by Commission.

176M501, 223NW915.

City could not require railroad, without compensation, to open up street across its right of way. Op. Atty. Gen., Oct. 31, 1930.

4743-14. Same—Overhead or underground.

Proceedings before commission under this section are not judicial, and the commission is not an indispensable party to a proceeding attacking the validity of a separation order, and the state is in no sense a real party in interest, in view of §§4650, 4651 giving the city the right of appeal. Chicago, M. St. P. & P. R. Co., (DC-Minn), 50F(2d)430. See Dun. Dig. 1589, 8119, 8121, 8121a.

Whether an order requiring separation of grades is lawful and reasonable is a judicial question, and the order may be vacated if beyond the powers of the commission, or if arbitrary or unsupported by the evidence. Id.

The Railroad and Warehouse Commission may require the construction of an overhead or underground crossing and divide the cost between the railroad company and the highway department. Where a highway is carried over railroad tracks by a bridge, the railroad company may be required to construct the bridge and approaches, but not a part of the highway outside both bridge and approaches. 176M501, 223NW915.

A railroad company which constructs an overhead bridge in accordance with statute, with a center pier which is approved by highway commissioner, does not have duty of caring for a reflector placed upon said pier to warn a traveler on highway. Murphy v. G., 248NW715. See Dun. Dig. 8120, 8121.

4744. Fences and cattle guards.

Railroad company held not liable for death of person caused by falling over retaining wall outside of right of way, on theory of failure to erect fences. Bremmer v. Hendrickson, (CCA8), 31F(2d)893.

4750. Ditches and culverts.

Finding that capacity of ditch was adequate and did not cause water to flow onto plaintiff's land, sustained. Nordlum v. G., 177M360, 225NW145.

4801. Common-law liability not to be limited.

There could be no recovery for loss of chicks in absence of proof of condition of chicks when delivered to carrier or proof of actual negligence. 177M494, 225NW432.

4802. Receipts and bills of lading—Liability of initial carrier.

Carrier is responsible for all damages to goods in transit, unless occasioned by certain excepted causes mentioned in 128M514, 151NW419. 171M205, 214NW17.

The rule that a carrier failing to reject improperly crated or loaded freight assumes to carry the freight at its peril, applies to carload shipments. 171M205, 214NW17.

In action for damages to shipment, shipping receipt and consignee's receipt with notations, were admissible. 117M494, 225NW432.

A letter from agent at point of destination, showing loss of property, is competent. 177M494, 225NW432.

4807. Free passes prohibited—Exceptions.—From and after Jan. 1st, 1908, it shall be unlawful for any person, association, co-partnership, or corporation, or any representative thereof, to offer, give, or in any manner furnish to any person, either for himself or another, any free pass or frank, or any special privilege or reduction in rate withheld from any other person for the traveling accommodation or transportation of any person or property, or the transmission of any message or communication except to persons included within the classes hereinafter designated and limited, and it shall also be unlawful for any person or persons not included within the classes hereinafter excepted or limited to solicit or receive, either for himself or another, from any person, association, co-

partnership or corporation, or use in any manner or for any purpose any free pass or frank or special privilege withheld from any person for the traveling accommodation or transportation of any person or property or the transmission of any message or communication; provided, however, that nothing contained in this act shall be construed to prohibit or to make unlawful or the issuing or giving of any such free ticket, free pass or free transportation to any person or persons within the classes hereinafter excepted or limited or the acceptance or use of the same by persons within such classes, that is to say, officers, bona fide agents, surgeons, physicians, attorneys and employes of such railroad or other companies, or persons affected by this act and dependent members of their families, the duly elected representatives of railroad labor organizations, children under 12 years of age, ministers of religion, secretaries of Young Men's Christian Associations, persons exclusively engaged in charitable and eleemosynary work, indigent, destitute and homeless persons, and such persons when transported by charitable societies or hospitals or by public charity, and necessary agents employed in such transportation, inmates of national homes or state homes for disabled volunteer soldiers, inmates of soldiers' and sailors' homes, including those entering and returning from such homes and boards of managers of such homes, postoffice inspectors, custom inspectors and immigration inspectors; witnesses of said railroad companies attending any legal investigation in which said company is interested; officials and linemen of telegraph and telephone companies; ex-employes retired from service on account of age or because of disability sustained while in the service of said railroad company and the dependent members of their families, or the widows or dependent children of employes killed or dying while in the service of such railroad company; necessary care-takers of live stock, poultry, vegetables and fruit, including transportation to and from point of delivery, employes on sleeping and express cars, railway mail service employes, newsboys on trains, baggage agents and persons injured in wrecks and physicians and nurses attending them; providing that one trip pass for a discharged employe and his family may be issued for use within 30 days of such discharge.

Provided further that the provisions of this act shall not be construed to prohibit and make unlawful the interchange of passes, and express and other franks for the officers, bona fide agents, surgeons, physicians, attorneys and employes and the dependent members of their families of any person or company affected by this act from doing any of the things prohibited hereby free, with the object of providing relief in cases of general epidemic, pestilence or calamitous visitation.

Provided further, that the provisions of this act shall not be construed to prohibit or make unlawful the interchange of passenger transportation and message service between such railroad companies and telegraph companies and provided further that the provisions of this act shall not be construed to prohibit or make unlawful the interchange between railroad, express, telegraph and telephone companies of the transportation of persons and property, and the transmission of messages.

Provided further, that no free transportation shall be issued or given to any person when such person is a member of, employed by or in any way connected with any political committee or a candidate for or incumbent of any office or position under the constitution and laws of this state except as herein provided, and except that any railroad company may issue free passes to its employes while occupying office or position other than judicial under a municipality or public school district, or while acting under appointment as a notary public in this state, and except that any railway company may issue free passes to any member of the state legislature or Board of Regents of

the University of Minnesota who is and has been an employe of such railway company for a continuous period of five years prior to his election to such office; provided, however, that such free transportation shall not be used by any such member of the legislature during the period of any legislative session nor for any travel for which mileage is collected from the state. ('07, c. 449, §1; G. S. '13, §4335; '13, c. 92, §1; '17, c. 53; '23, c. 121, §1; '27, c. 86, §1; Apr. 11, 1929, c. 162, §1.)

4819. City councils to have power to grant franchises.

Public convenience and necessity for the extension of a street car line, held not shown, and an order of the city council for such extension, held arbitrary and unreasonable. 179M548, 229NW883.

Street railroad company has burden of proving invalidity of unreasonableness of ordinance requiring extension of car line. 180M329, 230NW809.

An opinion expressed by a physician, sent by defendant to examine the plaintiff before settlement was made, as to the length of time required for recovery, was not sufficient ground for setting aside the release. Fornaro v. M., 182M262, 234NW300. See Dun. Dig. 8374(42), (44).

Some statements made by the claim agent, to the effect that defendant would take care of plaintiff, and that he would make it good for plaintiff, held not sufficient ground for setting aside the release under the circumstances shown. Fornaro v. M., 182M262, 234NW300. See Dun. Dig. 8374.

4821. Rates must be fair—Transfers.

An agreement between retailers and St. Paul City Railway to haul passengers into the loop free of charge on a certain day, the retailers guarantying that the receipts from transportation would equal other days, would be invalid. Op. Atty. Gen., Sept. 14, 1931.

Railroad and Warehouse Commission had power to authorize an agreement between the St. Paul City Railway and the St. Paul Association of Commerce whereby the former could permit passengers to ride down town on a certain day without payment of fares, which fares were to be subsequently paid in full by the St. Paul Association of Commerce. Op. Atty. Gen., Sept. 19, 1931.

4823. Street railways to make application to fix rates.

Commission has right to proceed at any time upon its own initiative to make investigation of street car rates, but there must be a full hearing. Op. Atty. Gen., Sept. 1, 1933.

4835. Unlawful charges.

New advanced freight rates held properly established, and old rates annulled. Crookston Milling Co. v. G., 185M563, 242NW287. See Dun. Dig. 1205c.

4843. Railroad commission to fix rates for switching drayage and feeding of stock.—The Board of Railroad and Warehouse Commission of this state is hereby empowered and directed to make for each of the railroad corporations doing business in this state, as soon as practicable, a schedule of reasonable maximum rates of charges for the transportation of freight and cars on each of said railroads and said power to make schedule shall include the classification of such rates, and it shall be the duty of said commission to make such classification, and said schedule so made by said commission shall, in all suits brought against any such railroad corporation wherein is in any way involved the charges of any such railroad corporation for the transportation of any freight or cars or unjust discrimination in relation thereto be deemed and taken in all the courts of this state as prima facie evidence that the rates therein fixed are reasonable and just maximum rates of charges. The commission may fix different schedules of class or commodity rates for railroads of the same class. The maximum rates shall not apply to switching or drayage rates. The commission may define switching and drayage service to apply to the movement of traffic within and between points, and fix reasonable maximum rates for the same, which shall be independent of any rates that may be made for line haul transportation, and in the making of said rates the commission shall not be governed entirely by the distance principle established by this Act. Provided, however, that any order of the commission fixing rates or charges for carrying livestock to St. Paul or between St. Paul and South St. Paul shall provide that the railroad that transports such

livestock to St. Paul shall absorb such switching charges from St. Paul to South St. Paul out of its line haul rates or charges for the transportation of such livestock to St. Paul, or the common rate point which includes St. Paul. The commission may fix rates for feeding cattle which shall apply to out movement from terminal markets. The commission may unite two or more stations or commercial centers into a common rate point, and may designate the classes of freight which shall take common rates, and fix the mileage that shall govern between the common rate point and any or all other points in the state. The distances so fixed shall not apply as a measure of the rate for the movement of the same class of freight for similar distances between other points. (G. S. '13, §4353; '13, c. 90, §6; '15, c. 367, §1; Apr. 13, 1933, c. 233.)

4865. Bill of lading—Evidence—Penalty.

In action for damages to shipment, shipping receipt and consignee's receipt with notations, were admissible. 177M494, 225NW432.

A letter from agent at point of destination, showing loss of property, is competent. 177M494, 225NW432.

4872. Minimum weight of carload lots of live stock.

—Every such company shall furnish at proper points designated by it, suitable cars for the transportation of live stock of all kinds, and shall transport the same at a rate not to exceed the highest rate and minimum weight charged by such company for any kind of stock in such car, except that the cattle rate and minimum weight will apply when by the use of same a lower charge results, and the cattle rate will apply when the actual weight exceeds the cattle minimum. The minimum weight of a single-deck carload of mixed livestock containing cattle weighing each in excess of 400 pounds for all purposes of calculating freight charges shall be 19,000 pounds, in cars 36 feet 7 inches in length and under, and 21,000 pounds in cars 40 feet 7 inches in length, and over 36 feet 7 inches in length, and 23,000 pounds for all cars over 40 feet 7 inches in length. Stock of different kinds shall be carried in the same car, at the option of the shipper, and the Railroad and Warehouse Commission is hereby authorized to provide for the partitioning of cars on such terms and conditions as it deems proper. Any such company failing to comply with any provision of this section shall forfeit to the party aggrieved not less than \$100.00, nor more than \$500.00. (R. L. '05, §2025; G. S. '13, §4379; '15, c. 254; '19, c. 301, §1; '27, c. 76; Apr. 20, 1931, c. 215, §1.)

4872-1. Effective July 1, 1931.—This Act shall take effect and be in force from and after July 1, 1931. (Act Apr. 20, 1931, c. 215, §2.)

4878. Damage to livestock—Notice of claim.

There could be no recovery for loss of chicks in absence of proof of condition of chicks when delivered to carrier or proof of actual negligence. 177M494, 225NW432.

In action for damages to shipment, shipping receipt and consignee's receipt with notations, were admissible. 177M494, 225NW432.

A letter from agent at point of destination, showing loss of property, is competent. 177M494, 225NW432.

4887. Certain depots to be kept open.

This statute does not violate the Fourteenth Amendment to the Federal Constitution. 177M136, 225NW94.

Findings of fact of Railroad Commission are prima facie correct on appeal. 177M136, 225NW94.

4916. Train brake system.

Casual connection between negligence and accident may be established by circumstantial evidence. 173M 587, 218NW125.

Applicable solely to railroad engaged solely in interstate commerce. Op. Atty. Gen., Apr. 23, 1929.

4919. Automatic couplers on freight cars.

For cases under Federal Safety Acts, see Mason's U. S. Code, Title 45, §1.

4920. Assumption of risk—Contributory negligence.

For cases under Federal Safety Appliance Acts, see Mason's U. S. Code, Title 45, §1.

4921. Powers of commission.

Applicable solely to railroad engaged solely in interstate commerce. Op. Atty. Gen., Apr. 23, 1929.

4926. Abandonment of road.

This section does not confer power on the Railroad and Warehouse Commission to interfere with the abandonment of a railroad on the ground that it is being operated at a loss. 32F(2d)819.

A railroad cannot be compelled to keep in operation at a permanent net loss. Minneapolis & St. Paul Sub. R. Co. v. V., 186M563, 244NW57. See Dun. Dig. 1647, 8088c.

Finding to effect that abandonment of Wildwood-White Bear line will not result in substantial injury to public, is sustained by evidence. Minneapolis & St. Paul Sub. R. Co. v. V., 186M563, 244NW57. See Dun. Dig. 8088c.

4926-1. Railroad shops or terminals may not be abandoned except etc.—No company operating any line of railway in the State of Minnesota shall abandon any shop or terminal located within this state or move any shop or change the location of any terminal except as provided in this act. Any company violating any provision of this act shall forfeit to the state not less than \$200 nor more than \$1000 for each day such violation continues. (Act Mar. 18, 1931, c. 64, §1.)

4926-2. Definitions.—The word "terminal" here used is defined to be any city or village in which 12 or more men employed in railroad train and engine service have established the legal residence.

The word "shop" is defined as a place in which 12 or more men are employed by a railroad as mechanics in the repairing of railroad equipment and is located in a city or village in which such men have established a legal residence. (Act Mar. 18, 1931, c. 64, §2.)

4926-3. Application to commission.—Any such company desiring to abandon any shop or terminal, or move any shop or change the location of any terminal in this state shall first make application to the Railroad and Warehouse Commission in writing. Before passing upon such application the Railroad and Warehouse Commission shall order a public hearing and fix a time and place thereof and require such notice thereof to be given as it deems reasonable. (Act Mar. 18, 1931, c. 64, §3.)

4926-4. Hearing—order.—In the hearing on the abandonment or removal of a shop or terminal if it shall be made to appear to such Commission that the abandonment of any shop or terminal or the change of any shop or terminal will result in efficiency in railroad operation and will not substantially injure the public or be detrimental to the public welfare, such petition may be granted, otherwise the same shall be denied. (Act Mar. 18, 1931, c. 64, §4.)

4930. Procedure for abandonment.

This section does not confer power on the Railroad and Warehouse Commission to interfere with the abandonment of a railroad on the ground that it is being operated at a loss. 32F(2d)819.

Though a railroad company has constitutional right to abandon its road for reason it can be operated only at a loss, legislature has not given railroad and warehouse commission power to authorize an abandonment on that ground. Minneapolis & St. Paul Sub. R. Co. v. V., 186M263, 244NW57. See Dun. Dig. 8078(23).

On appeal from order granting electric railway leave to abandon line, it was error to refuse villages affected opportunity to be heard. Minneapolis & St. Paul Sub. R. Co. v. V., 186M263, 244NW61. See Dun. Dig. 8082.

4932. Fire caused by engine—Insurable interest.

Liability of railway company for fire set by operations of its locomotives is absolute and not dependent on negligence. 177M261, 225NW111.

Burden rested on plaintiff to prove that fire was occasioned by sparks from a locomotive. 177M261, 225NW111.

The good condition of the locomotive and its having proper spark-arresting netting may be shown on the question whether the fire was caused thereby. 177M261, 225NW111.

\$800 for burning barn and other property, held not excessive. 177M261, 225NW111.

4933. Liability of corporations for injury or death to employes.

For employes engaged in interstate commerce, see Mason's U. S. Code, Title 45.

1. In general.

Whether there was negligence of a fellow servant, and whether his negligence was the cause of the injury to a railroad mechanic, held for the jury. 172M284, 214NW890.

Instruction as to negligence in not warning an employee not charged with negligence, held properly refused. 172M284, 214NW890.

\$12,500 damages held not excessive for injuries to neck and jaws. 172M284, 214NW890.

Under the Federal Boiler Inspection Act as amended, (Mason's U. S. C. A., Title 45, §23), the Interstate Commerce Commission is given exclusive jurisdiction to specify and prescribe the sort of equipment to be used on locomotives and to make rules and regulations by which fitness for service shall be determined. Mahutga v. M., 182M362, 234NW474. See Dun. Dig. 6022b, 6022r.

Motorcar and trailer operated on railroad track and piloted by railroad employe for telephone company was railroad operation, and railroad was liable for injury arising from negligence of employe of telephone company. Wegman v. G., 249NW422. See Dun. Dig. 6957.

3. Interstate commerce.

Railroad employe was engaged in interstate commerce while lining up a pipe used in transporting sand from a drying room to a storage tank for use upon locomotives engaged in such commerce. 173M169, 216NW940.

Empty car with defective coupler in process of repair, by inspector and intended to be sent to another state, "O. K. for grain," was engaged in interstate commerce, though the railroad had the power to divert it from interstate commerce and did divert it after injury to the inspector. 178M261, 226NW934.

8. Release of damages.

Statements by claim agent to effect defendant would take care of plaintiff, held not sufficient ground for setting aside release, under circumstances shown. Fornaro v. M., 182M262, 234NW300. See Dun. Dig. 8374.

An opinion expressed by a physician, sent by defendant to examine plaintiff before settlement, as to length of time required for recovery, was not sufficient ground for setting aside release. Fornaro v. M., 182M262, 234NW300. See Dun. Dig. 8374(42), (44).

9. Evidence.

Causal connection between negligence and accident may be established by circumstantial evidence. 173M587, 218NW125.

The evidence was insufficient to show that the engineer was negligent in operating his engine or in failing to stop, and no liability of defendants for the accident resulting in the death of plaintiff's intestate is shown. Meisenhelder v. B., 182M615, 233NW849. See Dun. Dig. 6025a.

Cause of death of section-hand while riding on a motor car held in the realm of conjecture. Phillips v. C., 182M307, 234NW307. See Dun. Dig. 7047.

Evidence held not to support a finding of negligence on the part of plaintiff's fellow servant who was unloading and piling ties with plaintiff on defendant's right of way. Nadeau v. M., 182M111, 233NW808. See Dun. Dig. 5945(72).

12½. Distribution of damages.

176M130, 222NW643.

13. Federal Employer's Liability Act.

For cases under Federal Employer's Liability Act, see Mason's U. S. Code, Title 45, §51.

179M67, 228NW546.

Finding that plaintiff who applied to railroad in 1921 and entered service and continued at work until 1928 had acquired the status of an employe under the Federal Employer's Liability Act held sustained by evidence. Borum v. M., 184M126, 238NW4. See Dun. Dig. 6022(d).

Misrepresentation of age by railroad employe seven years before injury was no bar to recovery for injuries received under Federal Employer's Liability Act. Borum v. M., 184M126, 238NW4. See Dun. Dig. 6022(d).

In action for death of railroad fireman, finding that engineer was negligent in failing to stop after derailment held sustained by evidence. Lindberg v. G., 185M331, 241NW49. See Dun. Dig. 6022i.

Cause of action under Federal Employer's Liability Act is transitory and probate court of this state has jurisdiction to appoint special administrator to bring suit here, even though next of kin reside in another state and injury and death of employe occurred there. Peterson v. C., 187M288, 244NW823. See Dun. Dig. 2351b.

Federal Employers' Liability Act and state statutes are substantially same in respect to essentials of cause of action and defenses and measure of damages. Wegman v. G., 249NW422. See Dun. Dig. 6022b.

14. Federal Safety Appliance Act.

A car coupler in which there are no mechanical defects and which operate properly both before and after an accident cannot be found to be defective merely because a brakeman, while riding on the moving car in a switching operation, failed to lift the coupler pin by pressing on the pin lifter with his foot. Meisenhelder v. B., 182M615, 233NW849. See Dun. Dig. 6022e.

A decision and order of the Interstate Commerce Commission is construed as standardizing a side cab curtain known as the Wisconsin curtain or type. Mahutga v. M., 182M362, 234NW474. See Dun. Dig. 6022b.

When such approved curtain is used, negligence cannot be predicated upon the failure to have a tie-back appli-

ance, such not being required by the Commission. Mahutga v. M., 182M362, 234NW474. See Dun. Dig. 6022b.

Physical facts held to demonstrate falsity of opinions and conclusions of expert witnesses in action involving violation of Federal Boiler Inspection Act, and court properly directed verdict for defendant. Larsen v. N., 185M313, 241NW312. See Dun. Dig. 3334.

Railroad held not negligent through act of switchman in opening switch under directions given by foreman who was fatally injured. Keegan v. C., 243NW60. See Dun. Dig. 6022i.

4934. Liability of common carriers.**3. Evidence.**

Liability of railroad for injury to section foreman while operating motor car. 225NW160.

Evidence, held to support verdict for plaintiff for negligence of fellow employes in dropping heavy objects on him from top of car on which all such employes were working. 181M97, 231NW710.

4. Damages.

\$17,300, held not excessive for permanent injury to car repairer 49 years old and earning \$105 per month. 181M97, 231NW710.

4935. Contributory negligence.

For employes engaged in interstate commerce, see Mason's U. S. Code, Title 45.

181M97, 231NW710.

4936. Employee not to be held to have assumed risk of employment.**3. Risks assumed.**

For cases under Federal Employers' Liability Act, see Mason's Code, Title 45, §1.

Section hand assumed risk of injury from attempt to board moving motorcar from the front after he had cranked it, his act resulting in catching his foot in fly-wheel. 181M20, 231NW404.

Car repairers and others doing similar work in the yards must protect themselves by use of blue flag or lookout, and no active duty of looking for them is cast on a switching crew. 178M261, 226NW934.

4. Risks not assumed.

A railway employe does not assume the risk of injury from a fellow-servant's negligence. 172M284, 214NW890.

5. Questions for jury.

Assumption of risk by railroad mechanic of negligence of a fellow servant, held for the jury. 172M284, 214NW890.

Assumption of risk by car repairer working on ground of injury from throwing of heavy object from top of car by fellow employes, held for jury. 181M97, 231NW710.

4937. Contrary contracts declared void.

Where a telephone company's motorcar and trailer were being operated over a railroad company's tracks, in charge of a conductor-pilot furnished by latter, pilot could not be denied his status and rights under either the federal or state employers' liability acts by contract between railroad company and telephone company. Wegman v. G., 249NW422. See Dun. Dig. 6022d.

4958. * * ***DECISIONS RELATING TO RAILROAD EMPLOYEES IN GENERAL**

A railroad which has not complied with its rules as to hearings before discharging an employe and has considered an oral grievance cannot complain of failure to present grievance in writing. George v. C., 183M610, 237NW876.

MOTOR VEHICLE TRANSPORTATION FOR HIRE**5015-1. Meaning of terms used.**

172M601, 215NW188.

This statute is valid. 174M248, 219NW167.

Carrier by motor cannot claim exemption from statute because he was carrying mail upon a federal highway at time of enactment of this statute. 174M331, 219NW167.

5015-2. Definitions.

This statute is valid. 174M248, 219NW167.

5015-3. Operation by auto transportation companies only as provided.

Act does not apply where wholesalers deliver merchandise sold to retailers with trucks owned by wholesalers for transportation less than those fixed by commission. Op. Atty. Gen., July 27, 1933.

5015-4. Powers and authority of Commission as to rates, fares, etc.

Liability of bus company for injury to passenger. 180M84, 230NW264.

The commission's power is limited to the granting or denial of a certificate of convenience and necessity, and it has no authority to issue an order to cease and desist; the remedy, in case of violation of its order, being a prosecution for the penalty, or injunction. 43F(2d)236. See Dun. Dig. 8078c, 8079.

Signors may obtain protection additional to that provided only by paying cost thereof themselves. Op. Atty. Gen., Mar. 21, 1933.

Commission has no authority to regulate bus depot companies. Op. Atty. Gen., June 23, 1933.

5015-6. Hearings on petitions for certificates.

Town board was authorized to employ an attorney to appear with and for the board before the Railroad and Warehouse Commission upon a hearing on a petition for a certificate permitting a certain applicant to operate a bus line through the town. Op. Atty. Gen., Feb. 6, 1932.

5015-8. Certificates—When granted.

An order of the railroad and warehouse commission on an application for a certificate is administrative and not res judicata. 43F(2d)236. See Dun. Dig. 8078e.

5015-9. Transfer, etc., of certificates.

A person operating an auto transportation company and holding a certificate of public convenience, upon forming a corporation, can transfer his certificate only upon authorization by Railroad Commission and payment of the fee provided. Op. Atty. Gen., May 6, 1931.

5015-10. Companies already operating.

This statute is valid. 174M248, 219NW167.

5015-11. Bonds of transportation companies—Indemnity insurance.

Consignors may obtain additional protection only by paying cost thereof themselves. Op. Atty. Gen., Mar. 21, 1933.

Commission may accept certified copies of bonds or insurance policy. Op. Atty. Gen., June 5, 1933.

Commission may enter into agreement with indemnity corporation whereby it is permitted to file one specimen copy of insurance policy to cover various permit operators. Op. Atty. Gen., Oct. 3, 1933.

5015-12. Laws applicable.

The provision that actions or proceedings against automobile transportation companies may be tried in any county through which such company operates applies only to original actions or proceedings in the district court and not to appeal from orders of the Railroad Commission. 179M90, 228NW444.

5015-13. Penalties.

The railroad and warehouse commission may enforce the penalties of this act without first issuing an order to cease and desist. 42F(2d)236. See Dun. Dig. 8078c, 8079.

5015-14. Interstate commerce excepted.

This statute is valid. 174M248, 219NW167.

5015-15. Filing fees.

A person operating an auto transportation company and holding a certificate of public convenience, upon forming a corporation can transfer his certificate only upon authorization by Railroad Commission and payment of the fee provided. Op. Atty. Gen., May 6, 1931.

5015-18. Not to affect charter limitations.—No provision in this act shall authorize the use by any transportation company of any public highway in any city of the first class, whether organized under Section 36, Article 4, of the Constitution of the State of Minnesota, or otherwise, in violation of any charter provision or ordinance of such city in effect January 1, 1925, unless and except as such charter provisions or ordinance may be repealed after said date; nor shall this act be construed as in any manner taking from or curtailing the right of any city or village to regulate and control the routing, parking, speed or the safety of operation of a motor vehicle operated by any transportation company under the terms of this act, or the general police power of any such city or village over its highways; nor shall this act be construed as abrogating any provision of the charter of any such city now organized and operating under said Section 36 of Article 4, requiring certain conditions to be complied with before such transportation company can use the highways of such city, and such rights and powers herein stated are hereby expressly reserved and granted to such city. ('25, c. 185, §18; Apr. 11, 1929, c. 154, §1.)

At common law there is a public right to operate a motorbus on public streets for transportation of passengers for hire. City of St. Paul v. T. 187M212, 245NW 33. See Dun. Dig. 4168, 6618. But see notes under §7433.

Commission may accept certified copies of bonds or insurance policy. Op. Atty. Gen., June 5, 1933.

5015-20. Definitions.—Unless the language or context clearly indicates that a different meaning is intended, the following words, terms and phrases shall,

for the purposes of this Act, be given the meaning here stated.

(a) The word "Commission" means the Railroad and Warehouse Commission of the State of Minnesota.

(b) The term "person" means and includes an individual, firm, copartnership, company, association or joint stock association and their lessees, trustees and receivers.

(c) The term "public highway" when used in this Act shall mean every public street, ally, road or highway or thoroughfare of any kind used by the public.

(d) The term "permit" means the license and/or franchise issued under this Act.

(e) The words "for hire" mean for remuneration or compensation of any kind, paid or promised, either directly or indirectly for the transportation of property on the highways. The words shall not be construed to apply to any occasional accommodation service by a person or corporation not in the transportation business, even though the same may be paid for.

(f) The term "common carrier" means any person who holds himself out to the public as willing to undertake for hire to transport from place to place over the public highways of this state the property of others who may choose to employ him, but who does not operate between fixed termini or over a regular route and is not subject to Laws 1925, Chapter 185.

(g) The term "contract carrier" means any person engaged in the business of transporting property for hire over the public highways of this state, other than as a common carrier.

The terms "common carrier" and "contract carrier" shall not apply to any person engaged in the business of operating motor vehicles in the transportation of property exclusively within the zone circumscribed by a line running parallel to the corporate limits of any city or village or contiguous cities and/or villages and thirty-five miles distant therefrom when such person resides within said zone. Terms "common carrier" and "contract carrier" shall not apply to a person engaged in agricultural pursuits who owns and uses a truck either for the purpose of transporting the products of his farm or occasionally transporting the property of others for hire. (Act. Apr. 8, 1933, c. 170, §1.)

A trucker contracting to haul produce of a large cooperative association is subject to this act and must charge minimum rates, but a cooperative association may purchase and pay expenses of operation of truck without coming within act. Op. Atty. Gen., June 23, 1933.

Act does not apply where wholesalers make deliveries of merchandise sold to retailers with trucks owned by wholesalers charging a lower rate therefor than that fixed by commission. Op. Atty. Gen., July 27, 1933.

Sale of trucks by baking company to its employees under contract limiting purchase and sale of goods to those of baking company held colorable only and trucks were under jurisdiction of commission. Op. Atty. Gen., Oct. 19, 1933.

5015-21. Railroad and Warehouse Commission to regulate and supervise trucks and buses.—(a) The Commission is hereby vested with power and authority and it is hereby made its duty to supervise and regulate every contract carrier engaged in intrastate commerce in this state to the extent provided in this act; to grant permits to such carrier upon the filing of an application therefor and the compliance with all lawful requirements; to require the keeping of such records and accounts and the filing of such reports as it may deem necessary to administer this Act; and before issuing a permit to any such carrier, it shall fix the minimum rates and charges for the transportation of property by such carrier, which rates shall not be less than the reasonable cost of the service rendered for such transportation, including a reasonable return on the money invested in the business and an adequate sum for maintenance and depreciation of the property used.

(b) The Commission is further vested with the power and authority and it is made its duty to supervise and regulate every contract carrier for the purpose of promoting safety on the highways and their conservation; to make rules and regulations respecting the lights and brakes used on the vehicles operated by such carriers and requiring the use of any and all safety devices that tend to make more safe the operation of such vehicles on the highways; to regulate the nature and character of the equipment to be used under a permit, the amount and character of tonnage which may be hauled thereunder on any motor vehicle and the method of loading or packing the freight transported, but the Commission shall not authorize the use of any equipment of greater dimensions or the transportation of tonnage of greater weight than is permitted by any existing law or any law which may be hereafter enacted; provided, however, that all such regulations shall be first approved by the Commissioner of Highways before the same shall become effective. To make such rules and regulations and require such reports under oath as may be necessary to the enforcement of this Act. (Act Apr. 8, 1933, c. 170, §2.)

5015-22. Must have permits to operate.—No person shall operate as a contract carrier in intrastate commerce without a permit from the Commission so to do in accordance with the provisions of this Act. (Act Apr. 8, 1933, c. 170, §3.)

5015-23. Petitions to be filed with Commission.—Any person desiring a permit to operate hereunder as a contract carrier shall file a petition therefor with the Commission. Such petition shall set forth the name and address of the applicant; the names and address of its officers, if any; full information concerning the financial condition and physical properties of the applicant; the kind of property which it is proposed to transport; substantially the territory in which it is proposed to operate; a description of each vehicle which the applicant intends to use, including the size, weight, and cubical contents; and such other information necessary to the enforcement of this Act as the Commission may, by order, require. Upon compliance with this Act a permit shall be issued by the Commission. No permit shall be issued to any common carrier by rail, whereby said common carrier will be permitted to operate trucks for hire within this state, nor shall any common carrier by rail be permitted to own, lease, operate, control, or have any interest whatsoever in any common carrier by truck either by stock ownership or otherwise, directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner; provided, however, that nothing in this Act shall prevent the railroad and warehouse commission from issuing a permit to a common carrier by rail, whereby such carrier will be given authority to operate trucks wholly within the limits of any municipality or municipalities served by the said railroad and which service shall only be a service supplementary to the rail service now established by such carrier. (Act Apr. 8, 1933, c. 170, §4.)

5015-24. Fees of applicants.—The applicant at the time of filing a petition for said permit shall pay into the treasury of the State of Minnesota a fee in the sum of \$5.00 where but one vehicle is to be operated. Where more than one vehicle is to be operated under the permit, an additional fee of \$2.50 shall be paid for each of such vehicles operated. Distinguishing plates shall be prescribed and furnished by the Commission for and shall be at all times displayed on each motor vehicle, and the place of the residence of the owner of the vehicle shall be stenciled in a conspicuous place on said motor vehicle. No permit granted under this Act shall be effective after the first day of January of the year following the year of its issue. Renewals shall be issued upon application made in accordance with this Act and upon the payment of the

fees prescribed for the original application. (Act Apr. 8, 1933, c. 170, §5.)

5015-25. Bonds of applicants.—Before such permit shall be issued such contract carrier shall secure and file, and keep the same at all times in full effect, with the Commission public liability and indemnity insurance satisfactory to the Commission in such amount and in such form as the Commission shall prescribe covering injuries and damage to persons or property occurring on the highways other than the employes of such contract carrier or the property being transported by such carrier. Such insurance shall be subject to cancellation for non-payment of premiums or withdrawals from service of a vehicle or vehicles covered thereby upon 15 days' written notice to the insured and to the Commission. Such insurance and/or bond may from time to time be reduced or increased by the Commission. The Commission may, if desired by the applicant, accept in lieu of said bond and/or insurance such other form of security as may be satisfactory to the Commission. (Act Apr. 8, 1933, c. 170, §6.)

5015-26. Permits not transferable.—No permit issued under the provisions of this Act shall be assigned or transferred. The Commission may, for a good cause upon not less than 10 days' notice to the holder thereof suspend or revoke such permit for any violation of any provision of this Act, or any law of this state or any order or regulation of the Commission. (Act Apr. 8, 1933, c. 170, §7.)

5015-27. Compensation for carriers to be fixed by Commission.—No contract carrier shall charge, demand, collect, or receive, nor shall a shipper pay, a less compensation for the transportation of property, or for any service in connection therewith, than the minimum rates and charges fixed by the Commission; nor shall any contract carrier refund or remit in any manner or by any device, directly or indirectly, any portion of the rates and charges required to be collected by the Commission's permit or order, nor extend to any shipper or person any privileges or facilities in the transportation of property except such as are specified in the Commission's permit or order. (Act Apr. 8, 1933, c. 170, §8.)

5015-28. Not to transport own property—exceptions.—No contract carrier as defined in this Act shall transport any property which it may own in whole or in part, except such property as may be necessary for the use of the owner of the truck or of his family and not for resale; provided, that such property may be transported for resale when transported directly to the place of business of the owner of the truck, or if such owner is a farmer to the farm of the owner. (Act Apr. 8, 1933, c. 170, §9.)

5015-29. Powers of Commission.—The Commission shall have the same power and authority with respect to the regulation and control of common carriers as are set forth in Section 2 with respect to contract carriers. (Act Apr. 8, 1933, c. 170, §10.)

5015-30. Permits for common carriers.—No person shall operate as a common carrier in intrastate commerce without a permit from the Commission so to do in accordance with provisions of this Act. The provisions of Sections 4, 5, 6, 7, 8, and 9 hereof shall govern the issuance, renewal, assignment and cancellation of permits to common carriers and the operations thereunder. (Act Apr. 8, 1933, c. 170, §11.)

5015-31. Powers of Commission.—(a) The Commission is hereby vested with power and authority to grant permits to contract carriers and common carriers engaged exclusively in transporting property in interstate commerce or between any point in the State of Minnesota and the Dominion of Canada, upon the filing of applications therefor and the compliance with all lawful requirements.

(b) The Commission is further vested with all the power and authority to supervise and regulate such

interstate and foreign carriers as is vested in the Commission by Section 2 (b) to supervise and regulate intrastate contract carriers. (Act Apr. 8, 1933, c. 170, §12.)

5015-32. Permits must be secured.—No person shall operate as a contract carrier or common carrier exclusively engaged in transporting property in interstate commerce, or property between any point in the State of Minnesota and the Dominion of Canada, without a permit from the Commission so to do, in accordance with the provisions of this Act. Any person desiring a permit to operate as such contract carrier or common carrier shall file a petition therefor with the Commission, which petition shall set forth the names and addresses of its officers, if any, full information concerning the financial condition and physical properties of the applicant; the nature of the transportation in which the applicant wishes to engage; the kind of property which it is proposed to transport; substantially the territory in which it is proposed to operate; a description of each vehicle which the applicant intends to use, including its size, weight and cubical contents; and such other information necessary to the enforcement of this Act as the Commission may, by order, require.

At the time of filing petition the applicant shall pay into the treasury of this state a fee in the sum of \$5.00 for the issuance of such permit where but one vehicle is to be operated. Where more than one vehicle is to be operated under the permit, an additional fee of \$2.50 shall be paid for each of such vehicles operated. Distinguishing plates shall be prescribed and furnished by the Commission and shall be at all times displayed on each motor vehicle authorized by the Commission to operate under this Act.

Before a permit shall be issued such applicant shall also secure and file with the Commission public liability and indemnity insurance satisfactory to the Commission and in such an amount as it shall prescribe, covering injuries and damage to persons and/or property occurring on the highway other than to employes of such carrier or the property being transported thereby. Such insurance shall be subject to cancellation for non-payment of premiums or withdrawals from service of a vehicle or vehicles covered thereby upon 15 days' written notice to the insured and to the Commission. Such insurance and/or bond may, from time to time be reduced or increased by the Commission. The Commission may, if so desired by the applicant, accept in lieu of said bond and/or said insurance such other form of security as may be satisfactory to the Commission.

Upon compliance with the provisions of this section, the Commission shall forthwith issue said permit.

No permit granted under this Act shall be effective after the first day of January of the year following the year of its issuance. Renewals shall be issued upon payment of the fees hereinbefore provided.

No permit issued under the provisions of this Act shall be assigned or transferred. The Commission may for a good cause upon not less than 10 days' notice to the holder thereof suspend or revoke such permit for any violation of any provision of this Act or any law of this state or any order or regulation of the Commission. (Act Apr. 8, 1933, c. 170, §13.)

5015-33. Powers of Commission to refuse permits.—The Commission shall have power to refuse to issue a permit as a common carrier or contract carrier as defined herein to an Auto Transportation Company subject to Laws 1925, Chapter 185 [§§5015-1 to 5015-19], and shall have power to refuse to issue a permit to such common carrier and contract carrier if such common or contract carrier is owned in whole or in part directly or indirectly, by stock ownership or otherwise, by an Auto transportation Company subject to Laws 1925, Chapter 185. Where such financial interest is found to exist, the Commission after hearing may, in its discretion, cancel any permit

issued under this Act. (Act Apr. 8, 1933, c. 170, §14.)

5015-34. Trucks must be cleaned before carrying food stuffs.—No contract carrier or common carrier engaged in either intrastate or interstate commerce holding a permit under this Act, and no auto transportation company holding a certificate under Laws 1925, Chapter 185 [§§5015-1 to 5015-19], shall transport for hire food for human consumption nor any article or package containing any property intended for or that could be used in any household in any motor vehicle in which live stock has been transported unless such motor vehicle has been thoroughly cleaned. (Act Apr. 8, 1933, c. 170, §15.)

5015-35. Commission to fix hours of service.—It shall be the duty of the Commission and it is hereby so empowered to establish, regulate and fix the hours of service of truck drivers employed by carriers subject to this Act and Auto Transportation Companies subject to Laws 1925, Chapter 185 [§§5015-1 to 5015-19], and to that end may require from all of such carrier such reports and information as it may deem necessary to the enforcement of its orders respecting the same; provided, however, that the Railroad and Warehouse Commission shall fix the hours of service on a basis so that no truck driver shall operate a truck for more than twelve hours continuously. (Act Apr. 8, 1933, c. 170, §16.)

5015-36. Violations—complaints—hearings.—Where any terms of this Act or any order of the Commission adopted hereunder, or any provisions of Laws 1925, Chapter 185, or any order issued thereunder, have been violated, the Commission upon complaint being filed, or on its own motion, may issue and serve upon such person or corporation a complaint stating its charges in that respect, and containing a notice of hearing upon a day and at a place therein fixed at least 20 days after the service of said complaint and notice. The person or corporation so complained of shall have the right to appear at the time and place so fixed and show cause why an order shall not be entered by the Commission requiring such person or corporation to cease and desist from the violation of this Act or any order of the Commission and/or the provisions of Laws 1925, Chapter 185, or any order of the Commission thereunder. If upon such hearing the Commission shall be of the opinion that any of the provisions of this Act or of said Laws 1925, Chapter 185, or any order of the Commission, have been so violated, it shall so find and shall issue and cause to be served upon such person or corporation an order requiring such person or corporation to cease and desist from such violation. (Act Apr. 8, 1933, c. 170, §17.)

5015-37. Inspectors may serve papers.—The inspectors of the Commission, for the purpose of enforcing this Act, shall have all the powers conferred by law upon police officers to serve warrants and any other processes in this state, and it shall be the duty of the State Commissioner of Highways upon written request of the Commission to require the State Highway Patrol to assist in the enforcement of this Act. (Act Apr. 8, 1933, c. 170, §18.)

Inspectors have no right to make arrests for violation of act. Op. Atty. Gen., June 22, 1933.

Patrolmen are authorized to extend their operations to all highways irrespective of Laws 1931, c. 44. Id.

5015-38. Appeals.—In all cases in which the Commission has power and authority under this Act, proceedings may be instituted, complaints made and filed with it, processes issued, hearings held, opinions and orders and decisions made and filed and appeals taken by any aggrieved party from any order so made to the district court and to the supreme court or to either of this state. In case of any such appeal the issues involved therein shall be tried de novo. Any party to a proceeding may take said appeal to the district court of the county in which the complainants or a majority of them reside or in case none of them

reside in the state or in a proceeding commenced by the Commission on its own motion without complaint to the district court of one of the counties in which the order of the Commission requires a service to be performed or an act to be done or not to be done by the carrier. Upon service of said notice of appeal said Commission by its secretary shall forthwith file with the clerk of said district court to which appeal is taken a certified copy of the order appealed from. In case appeals are taken to the district court of more than one county they shall be consolidated and tried in the district court of the county to which the first appeal was taken. The person serving such notice of appeal shall within five days after the service thereof file the same with proof of service with the clerk of the court to which such appeal is taken; and thereupon said district court shall have jurisdiction over said appeal, and the same shall be entered upon the records of said district court and shall be tried therein according to the rules relating to the trial of civil actions. No further pleadings than those filed before the Commission shall be necessary. If such appeal is not taken within said time such order shall become final. (Act Apr. 8, 1933, c. 170, §19.)

5015-39. May not transport persons.—It shall be unlawful for any person holding a permit hereunder to transport any person in said truck for hire. (Act Apr. 8, 1933, c. 170, §20.)

5015-40. Violation a misdemeanor.—Any person who violates or who procures, aids or abets in the violation of any provision of this Act, or of any order of the Commission issued hereunder or the provisions of Laws 1925, Chapter 185, or any order of the Commission issued thereunder, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not exceeding \$100.00, or imprisonment for 90 days. Every distinct violation shall be a separate offense, and in the case of a continuing violation each day shall be deemed a separate offense. Upon written request of the Commission, it shall be the duty of the Attorney General and/or any County Attorney within his jurisdiction to prosecute any person alleged to have committed such an offense. (Act Apr. 8, 1933, c. 170, §21.)

Proceedings to enforce law, discussed. Op. Atty. Gen., Sept. 9, 1933.

State prison selling products f. o. b. Stillwater must ascertain whether trucker employed by purchaser has a permit, etc. Op. Atty. Gen., Sept. 25, 1933.

All peace officers may enforce section. Op. Atty. Gen., Oct. 3, 1933.

5015-41. Provisions separable.—If any section, subsection, sentence, clause or phrase of this Act is for any reason held unconstitutional, such section shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional. (Act. Apr. 8, 1933, c. 170, §22.)

5015-42. Monies to be paid into state treasury.—All moneys received under the provisions of this Act shall be paid into the treasury of the State of Minnesota and may be used by the Railroad and Warehouse Commission for the employment of inspectors for the purpose of inspecting the mechanical equipment of all trucks subject to this Act and for the general enforcement of this Act. Any money that may be left in such fund at the end of any calendar year from permit fees for such calendar year shall be placed to the credit of the Highway Fund of this state and become a part thereof.

The Commission is empowered to expend such money as may be necessary for the administration and enforcement of this Act including the employment of all necessary clerks, inspectors and other employes, and for such purpose shall not expend any money in

excess of the collections made under this act. (Act Apr. 8, 1933, c. 170, §23; Apr. 21, 1933, c. 397, §1.)

5015-42a. Effective July 1, 1933.—This Act shall take effect and be in force from and after July 1, 1933. (Act Apr. 21, 1933, c. 397, §2.)

5015-43. Business declared to be of public interest.—The business of operating a motor vehicle for the transportation of property by a contract carrier or a common carrier as in this Act defined upon the highways of this state is declared to be a business affected with the public interest. The rapid increase of motor carrier traffic and the fact that under existing law many motor trucks are not effectively regulated, have increased the dangers and hazards on public highways and make it imperative that more stringent regulations should be employed to the end that the highways may be rendered safer for the use of the general public and that the discrimination in rates charged may be eliminated. (Act Apr. 8, 1933, c. 170, §24.)

5015-44. Effective July 1, 1933.—This Act shall take effect and be in force on and after July 1, 1933. (Act Apr. 8, 1933, c. 170, §25.)

STORAGE AND SHIPMENT OF GRAIN TERMINAL WAREHOUSES

5016. Public terminal warehouses—Definition.

Railroad and warehouse commission may in its discretion designate or refuse to designate an elevator as a public terminal warehouse. Op. Atty. Gen., Feb. 3, 1933.

5018. Must be licensed by Railroad and Warehouse Commission.

Where charter of elevator company expired by limitation of law and the company was reincorporated under a different name, the Railroad and Warehouse Commission after such reincorporation having granted a license to the old company could amend the same and insert the correct name of the licensee, but a bond must be filed containing the correct name. Op. Atty. Gen., Dec. 3, 1931.

5023. Inspection at terminal warehouse.—All grains received at a terminal warehouse shall be inspected and graded by a state or federal inspector at the time of its receipt, provided such grain has not previously been inspected out of a warehouse at another terminal in Minnesota. The rights of reinspection and appeal are hereby expressly preserved to all interested parties. All grain shall be inspected in like manner upon delivery from such warehouse. The charges for such inspections shall be paid by the warehouseman and added to the storage, and the chief inspector may recover such charges from the warehouseman. ('23, c. 201, §8; Apr. 12, 1929, c. 175, §1.)

Sec. 2 of Act Apr. 12, 1929, provides that the act shall take effect from and after May 1, 1929.

5041. Duty of inspectors.—Such inspectors shall inspect and grade all grain received at or shipped from any terminal warehouse in carload or boatload lots, and give a certificate of the inspection to the person entitled thereto. Provided such inspectors shall not be required to grade any grain which has previously been inspected by a state inspector at another terminal in Minnesota. All rights and privileges covering reinspection and appeal in such cases are hereby preserved to all interested parties. Their decisions shall be conclusive as to the grade and dockage of such grain, and the certificate shall be evidence thereof, unless changed upon reinspection or appeal. (R. L. '05, §2068; G. S. '13, §4458; '17 c. 280, §1; Apr. 12, 1929, c. 174, §1.)

Act Apr. 12, 1929, c. 174, §2, provides that the act shall take effect from and after May 1, 1929.

5047. Fees for inspection and weighing.

Fees and fines collected are money and property belonging to state which legislature may appropriate in any manner it may determine. Op. Atty. Gen., May 16, 1933.

LOCAL WAREHOUSES

5059. Public warehouses.

Grain shipped from a local warehouse within state and consigned to a terminal within state is intrastate commerce. Op. Atty. Gen., July 27, 1933.

Grain shipped from a local warehouse consigned to a local terminal outside state, even though stored in an intermediate warehouse waiting reshipment, is within interstate commerce. *Id.*

Grain shipped into state from without state is in interstate commerce until it comes to rest within state. *Id.*

Grain shipped from without state consigned to another state is in interstate commerce even though temporarily stored within state waiting reshipment. *Id.*

5065. Grain delivered on surrender of receipt.

Public grain warehouse receipts are assignable as security and assignee is protected by grain warehouse bond. *Op. Atty. Gen., Mar. 15, 1933.*

5071. Warehousemen to be licensed.

Authority of principal to deliver bond, after signed by surety and forwarded to and signed by principal, implied whenever it is fairly and legally inferable from the circumstances that such was the intention of the parties, but the appointment of a receiver in the meantime for principal, because of insolvency, terminates such implied authority. 171M455, 214NW507.

Bond filed by principal after appointment of receiver did not become effective against the surety. 171M455, 214NW507.

Demand is not necessary in action for conversion of stored grain against surety after property of warehouseman is in hands of receiver. 171M455, 214NW507.

Public grain warehouse receipts are assignable as security and assignee is protected by grain warehouse bond. *Op. Atty. Gen., Mar. 15, 1933.*

STORAGE OF GRAIN UPON FARMS

5077-1. Object and purpose of act.—The purpose of this act shall be to provide the owner of grain in this state with means of warehousing same on the farms, under proper restrictions and safeguards, as a basis for credit and to aid in the orderly marketing thereof. (Act Apr. 21, 1931, c. 294, §1.)

5077-2. Supervision by Railroad and Warehouse Commission.—The Railroad and Warehouse Commission (hereinafter referred to as "the Commission") is hereby authorized and it is hereby declared to be its duty to carry out the provisions of this act and to that end it is hereby given full authority to prescribe such rules and regulations as may be deemed necessary for carrying out the provisions thereof. (Act Apr. 21, 1931, c. 294, §2.)

5077-3. Grain Inspection.—Whenever ten or more farmers operating farm lands tributary to any market center, or any less number of farmers having at least 5,000 bushels of grain for storage, shall apply to the Commission in writing to have their grain inspected for the purpose of securing a warehouse certificate thereon, the Commission shall cause such grain to be inspected as soon as practicable. Provided, however, that the Commission may at its discretion, inspect the grain of any applicant making application for farm grain storage hereunder. Such applicant shall designate where such grain is kept, the kind of structure in which it is stored, the incumbrance, if any, upon such grain, and shall state the name of all persons interested therein, and shall be signed and sworn to by the applicant. Whenever any grain is owned by more than one owner, said application shall be signed by all having any interest therein. In case the grain is mortgaged the application shall be signed by the owner and the mortgagee or his agent, duly authorized in writing, and any certificate issued for grain owned by more than one person or which is incumbered shall be issued in the names of such persons, including the mortgagee. Such application may direct the Commission to issue and deliver the certificate to be issued in conformity with such application to the applicant or any other person, firm or corporation, which delivery shall constitute a full and complete assignment thereof to the same effect as if personally endorsed and delivered by the applicant. (Act Apr. 21, 1931, c. 294, §3.)

5077-4. Fees for inspection.—Each applicant shall remit with such application, a minimum of \$5.00, and if the quantity of grain to be inspected exceeds 1000 bushels, one-half cent per bushel for the number of bushels sought to be inspected, payable to the Minnesota Railroad and Warehouse Commission, which fee

shall be credited to the general grain inspection fund. (Act Apr. 21, 1931, c. 294, §4.)

5077-5. Warehouses to be sealed.—When application shall be made for inspection under the provisions of this act, the Railroad and Warehouse Commission shall designate a qualified sampler to inspect the bin and structure in which the same is to be stored, to determine the availability for the warehousing of the grain, and to procure a fair average sample of such grain by the use of a standard grain probe, and thereafter to seal the bin or granary with a ball type seal bearing the name of Minnesota Railroad and Warehouse Commission and the seal number and the year of such sealing, and putting upon the structure or bin so sealed a notice containing a printed copy of the penalty prescribed for entering sealed bins or structure or removing such grain or any part thereof, by any person who is not the holder of the receipt or under the direction of the Railroad and Warehouse Commission. The person making such inspection and obtaining such sample shall at once forward the sample to the State Grain Inspection Department in Minneapolis, sending at the same time his report on the quantity of such grain in the bin or structure in which the same is contained. (Act Apr. 21, 1931, c. 294, §5.)

5077-6. Warehouse receipts may be issued.—Upon receipt of such sample the State Grain Inspection Department of Minneapolis shall inspect the grain and determine the grade thereof, and shall issue warehouse certificate therefor, and every such certificate must embody within its written or printed terms:

(a) The consecutive number of the certificate.

(b) The date of issue of the certificate.

(c) A description of the granary, bin, or structure in which the grain is stored, and the premises upon which it is located.

(d) A description of the grain giving its grade, kind, variety, dockage, test weight and moisture content, and the number of bushels of such grain based on cubic measurement and not by weight.

(e) The name of the owner, or owners, whether ownership is sole, joint or in trust, and the conditions of such ownership, as shown in the application.

(f) A statement of any and all liens or incumbrances upon said grain as reported by the owner in his application.

(g) A statement whether the grain will be delivered to the bearer, to a specified person, or a specified person or his order, and at what place it will be delivered.

(h) A statement as to whether any other certificate has been issued covering any grain in the same granary, bin or structure, and the amount of such certificate.

(i) Any other matter or information required by the rules and regulations promulgated under this act, and deliver such certificate to the parties entitled thereto as heretofore provided. (Act Apr. 21, 1931, c. 294, §6.)

5077-7. Certificates to be in triplicate.—All such warehouse certificates issued under the provisions of this act shall be in triplicate, the original to be printed upon white paper, and the duplicate copies to be printed upon tinted paper, the original and one copy to be delivered to the parties entitled thereto as heretofore provided, and one of the duplicate copies to be retained by the inspection department. Both copies of the certificate shall have plainly printed or stamped upon the face thereof "Duplicate Certificate No value." If a loan is made upon such grain the parties interested may file with the Register of Deeds of the county in which such grain is stored the copy of the certificate held by the owner, and upon payment of a filing fee of thirty-five cents such copy shall be indexed as a chattel mortgage upon the grain described in the certificate, is pledged to the redemption of the loan.

Any assignment of such receipt may also be filed and properly endorsed upon the receipt, and when

filed shall have the same force as the filing of any assignment of chattel mortgage. Any owner or owners of grain stored under the provisions of this act, where the certificate has not been pledged or negotiated, may procure the release of such grain from storage thereunder by delivering the original warehouse certificate to the State Grain Inspection Department at Minneapolis, which shall, upon the receipt thereof, cancel the same by perforating it with the words "Surrendered and Cancelled" and shall notify such original holder or holders of such cancellation, and the receipt of such notice of cancellation by such owner or owners shall be authority to such owner or owners to break the seal and retake possession of the grain in such certificate described. Upon delivery by the owner or owners, to the warehouse certificate holder, of the grain pledged thereby, or upon payment of the obligation for which such certificate has been pledged, the warehouse certificate holder shall be required to cancel and redeliver such certificate to the owner of such grain, such cancellation to be so made by endorsing thereon in ink the words "Cancelled and Delivered to the Owner of the Grain," together with the signature of such warehouse certificate holder.

Such owner of grain may upon cancellation of such warehouse certificate, forward the same to the State Grain Inspection Department for the purpose of having it cancelled in its office and discharged of record, and the said Inspection Department shall notify the Register of Deeds of the county in which the duplicate certificate is filed to discharge any cancelled certificate of record; and such Register of Deeds is hereby required to cancel the same, without charge, upon such notice from the Commission. All original warehouse receipts so cancelled as above by the Inspection Department shall be retained in the files in its office and a permanent record of such certificate so cancelled shall be kept; such record to show the name of the person or persons to whom the certificate was issued, the number of the certificate, the date of cancellation and when the cancelled certificate was surrendered as paid and the name of the person surrendering the same. (Act Apr. 21, 1931, c. 294, §7.)

5077-8. Owner to deliver grain on demand.—The owner of grain stored under the provision of this act shall be charged with the due care of said grain and shall exercise that degree of due care and diligence, which any ordinary prudent person would exercise with regard to similar property of his own. The owner shall also, upon demand of the holder of such certificate, deliver said grain to his usual market place without charge to the holder. No legal demand for the delivery of said grain shall be made, however, upon said owner until the maturity of the obligation for which said certificate is pledged, or until the security shall become impaired. In case of the maturity of the obligation for which said certificate was pledged or in case of the impairment of such security, and the refusal of said owner to deliver such grain as above provided, then the holder of the certificate shall be entitled to take immediate possession of the grain so pledged, and to sell the same at the market price thereof, and to retain from the proceeds of such sale all expenses of the removal and transporting of such grain to market. (Act Apr. 21, 1931, c. 294, §8.)

5077-9. Records not open to public.—The said Inspection Department shall not allow the inspection

by the general public of its records as to the amount, kind, quality or variety of grain stored, but said records shall be open to the holder of any certificate as to the portion thereof relating to the grain covered by such certificate. (Act Apr. 21, 1931, c. 294, §9.)

5077-10. Warehouseman's bond may be filed.—The locking up and sealing of any storage facility acceptable to the Commission is hereby waived, if and when the applicant shall have filed a warehouseman's bond as a guarantee to the carrying out of the provisions of this Act. Any such bond may be accepted by the Commission in lieu of the locking and sealing of stored grain under the rules and regulations promulgated hereunder with reference thereto. (Act Apr. 21, 1931, c. 294, §10.)

5077-11. Owner to be responsible for grade.—The owner or owners of grain stored hereunder shall be responsible for the quality of the grain being equal to that stated in the certificate. Provided, however, that when such grain is marketed it shall be sold according to its then actual grade. Whenever the amount certified to shall have been determined by cubic measurement, said amount shall be deemed prima facie evidence of the amount of said grain, but the actual amount shall be determined by the actual weight thereof when marketed, and the owner shall be responsible and liable to the holder of the certificate for the delivery of the amount of grain indicated in said certificate, by actual weight thereof. (Act Apr. 21, 1931, c. 294, §11.)

5077-12. Penalties for breaking seal.—Any person who shall without order or direction of the Commission break the seal of any bin or structure wherein grain is stored under the provisions of this act, or who shall break or enter the structure or bin wherein such grain is so stored except for actual delivery of such stored grain to the holder of a pledged certificate, or who shall damage, remove, or destroy any grain stored and sealed under the provisions of this act, shall be guilty of a felony and upon conviction therefor shall be punished by imprisonment in the county jail for not less than one year, or in the state prison for not less than one nor more than three years; or by a fine of not less than \$300.00 nor more than \$1,000.00 or both such fine and imprisonment. (Act Apr. 21, 1931, c. 294, §12.)

5077-13. Penalties for false statements.—Any person who shall, in order to procure any warehouse certificate hereunder, make any statement of material fact knowing such statement to be false, shall be guilty of a gross misdemeanor, and shall, upon conviction thereof, be punished by imprisonment in the county jail for not less than six months nor more than one year, or by a fine of not less than \$200.00 nor more than \$500.00 or both such fine and imprisonment. (Act Apr. 21, 1931, c. 294, §13.)

5077-14. Provisions separable.—If any provision or part of this act be held unconstitutional it shall not invalidate or in any way affect any other provision or part thereof. (Act Apr. 21, 1931, c. 294, §14.)

MISCELLANEOUS PROVISIONS

5084. Supervision by commission over buying, selling, etc.

Whether form of grain purchase contract would violate law, held question of fact. Op. Atty. Gen., Aug. 1, 1933.